

In the  
**Indiana Supreme Court**

CAUSE NUMBER: 94S00-0702MS- 49



ORDER AMENDING RULES OF APPELLATE PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rule 63 of the *Indiana Rules of Appellate Procedure* is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

**INDIANA RULES OF APPELLATE PROCEDURE**

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**Rule 63. Review of Tax Court Decisions**

**A. Review of Final Judgment or Final Disposition.** Any party adversely affected by a Final Judgment of the Tax Court as defined by Rule 2(H), or ~~by a final disposition~~ by the Tax Court of an appeal from a court of probate jurisdiction, shall have a right to petition the Supreme Court for review of the decision. ~~The Petition for Review shall concisely set forth: Final Judgment or final disposition.~~

(1) ~~Question Presented on Review.~~ A brief statement identifying the issue, question, or precedent warranting review. The statement must be argumentative or repetitive. ~~The statement shall be set out by itself on the first page after the cover.~~

(2) ~~Table of Contents.~~ A table of contents containing the items specified in Rule 46(A)(1).

(3) ~~Background and Prior Treatment of Issues on Review.~~ A brief statement of the procedural and substantive facts necessary for consideration of the Petition for Review, including a statement of how the issues relevant to review were raised and resolved by the lower administrative tribunals and the Tax Court.

(4) ~~Argument.~~ An argument section explaining the reasons why review should be granted.

(5) ~~Conclusion.~~ A short and plain statement of the relief requested.

(6) ~~Word Court Certificate, if necessary.~~ See Rule 44(F).

(7) ~~Certificate of Service.~~ See Rule 24(D).

**B. Rehearing.** ~~Rehearing from decisions of the Tax Court is~~ Any party adversely affected by a Final Judgment or final disposition may file a Petition for Rehearing with the Tax Court, not a Motion to Correct Error. Rehearings from a Final Judgment or final disposition of the Tax Court shall be governed by Rule 54. A Petition for Rehearing need not be filed in order to seek Review, but when a Petition for Rehearing is used, a ruling or order by the Tax Court granting or denying the same shall be deemed a final decision and ~~review~~ Review may be sought.

**C. ~~Time for Filing Petition.~~ A Petition for Review shall be filed:** Notice of Intent to Petition for Review. A party initiates a petition for review by filing a Notice of Intent to Petition for Review with the Clerk in accordance with requirements of Rule 9 (except with respect to the filing fee) no later than:

(1) ~~no later than thirty (30) days after the adverse judgment if rehearing was not sought; or~~

(2) ~~if rehearing was sought, no later than thirty (30) days after the Tax Court's~~  
(1) thirty (30) days after the Final Judgment or final disposition of the if a Petition for Rehearing; was not sought; or

(2) thirty (30) days after final disposition of the Petition for Rehearing if rehearing was sought and such Petition was timely filed by any party.

Rule 25(C), which provides a three-day extension for service by mail or third-party commercial carrier, does not extend the due date for filing a Notice of Intent to Petition for Review, and no extension of time shall be granted.

No Appellant's Case Summary shall be filed by the petitioning party.

**D. Clerk's Record and Transcript.** The Clerk shall give notice of filing of the Notice of Intent to Petition for Review to the Court Reporter and shall assemble the Clerk's Record in

accordance with Rule 10. The Court Reporter shall prepare and file the Transcript in accordance with Rule 11. The Clerk shall retain, transmit, and grant access to the Clerk's Record in accordance with Rule 12. Reference to the "trial court clerk" in Rules 10, 11, and 12 shall mean the Clerk.

**E. Petition for Review.** The petitioning party shall file its Petition for Review no later than thirty (30) days after:

(1) the date the Clerk issues its notice of completion of the Clerk's Record if the notice reports that the Transcript is complete or that no Transcript has been requested; or

(2) in all other cases, the date the Clerk issues its notice of completion of the Transcript.

**F.D. Brief in Response.** A party may file a brief in response to the Petition for Review no later than ~~twentythree~~ (2030) days after the Petition is served. ~~Rule 25(C), which provides a three-day extension for service by mail or third-party commercial carrier, may extend the due date; however, no other extension of time shall be granted.~~

**GE. Reply Brief.** The petitioning party may file a reply brief no later than ~~ten~~ fifteen (~~10~~ 15) days after a brief in response is served. ~~Rule 25(C), which provides a three-day extension for service by mail or third-party commercial carrier, may extend the due date; however, no other extension of time shall be granted.~~

**H.F. Review of Interlocutory Orders.** Any party adversely affected by an interlocutory order of the Tax Court may petition the Supreme Court for Review of the order pursuant to Rule 14(B), which shall govern preparation of the Record on Appeal in interlocutory appeals. No Appellant's Case Summary or Notice of Appeal Intent to Petition for Review shall be filed after the Supreme Court accepts a petition for interlocutory review.

**I.G. Form and Length Limits.** A Petition for Review, any brief in response, and any reply brief are governed by Rules ~~43 and 44~~ 43, 44, and 46; provided, that, immediately before the Argument section in the Petition for Review and brief in response there shall be a separate

section entitled *Reasons for Granting [or Denying] Review*, which shall concisely explain why review should or should not be granted. Reference to the “appellant’s brief,” “appellee’s brief,” and “appellant’s reply brief” in Rule 46 shall mean the Petition for Review, brief in response, and reply brief, respectively. No separate brief in support of the Petition shall be filed.

**J.H. Fiscal Impact.** Any brief may discuss the fiscal impact of the Tax Court's decision on taxpayers or government.

**K. Extensions of Time.** Extensions of time may be sought under Rule 35 except that no extension of the time for filing the Notice of Intent to Petition for Review shall be granted.

**L. Appendices.** Appendices shall be filed in compliance with Rules 49, 50, and 51. Reference to the “appellant’s brief” and “appellee’s brief” in Rule 49 shall mean the Petition for Review and brief in response, respectively.

**M.I. Considerations Governing the Grant of Review.** The grant of review is a matter of judicial discretion. The following provisions articulate the principal considerations governing the Supreme Court’s decision whether to grant Review.

(1) *Conflict in Tax Court or Court of Appeals Decisions.* The Tax Court has entered a decision in conflict with another decision of the Tax Court or the Court of Appeals on the same important issue.

(2) *Conflict with Supreme Court Decision.* The Tax Court has entered a decision in conflict with a decision of the Supreme Court on an important issue.

(3) *Undecided Question of Law.* The Tax Court has decided an important question of law or a case of great public importance that ~~has not been, but should be,~~ decided by the Supreme Court.

(4) *Precedent in Need of Reconsideration.* The Tax Court has correctly followed the ruling precedent, but such precedent is erroneous or in need of clarification or modification in some specific respect.

(5) *Conflict with Federal Appellate Decision.* The Tax Court has decided an important federal question in a way that conflicts with a decision of the Supreme

Court of the United States or a United States Court of Appeals.

(6) *Significant Departure From Law or Practice.* The Tax Court has so significantly departed from accepted law or practice as to warrant the exercise of the Supreme Court's jurisdiction.

**N.J.—Effect of Denial of Review.** The denial of a Petition for Review shall have no legal effect other than to terminate the litigation between the parties in the Supreme Court. No Petition for Rehearing may be filed from an order denying a Petition for Review.

**O.K.—Effect of Grant of Review.** After the Supreme Court grants review, the Tax Court retains jurisdiction of the case for the purpose of any interim relief or stays the parties may seek. The Supreme Court may review the Tax Court's disposition of any request for interim relief or stay.

**L. Briefing After Petition Granted.**

(1) ~~—— *Petitioner's Brief.* If the Supreme Court grants the Petition for Review, the petitioner shall file its brief no later than thirty (30) days after the order granting review.~~

(2) ~~—— *Brief in Response.* The respondent shall file its brief in response no later than thirty (30) days after the petitioner's brief is served.~~

(3) ~~—— *Reply Brief.* The petitioner may file a reply brief no later than fifteen (15) days after service of the brief in response.~~

(4) ~~—— *Form and Length.* These briefs are governed by Rules 43 and 44.~~

(5) ~~—— *Extensions.* Extensions of time may be sought under Rule 35.~~

**M. Record for Review.**

(1) ~~—— *Clerk's Record.* After a Petition for Review and the preliminary briefs are filed, the Clerk shall prepare the Clerk's Record, including a chronological case summary. The Clerk's Record need only be contained in case folders with the documents ordered chronologically by filing date.~~

(2) ~~—— *Transcripts.* When the Supreme Court grants the Petition for Review, the petitioner shall, within thirty (30) days of the order, file any necessary~~

~~Transcripts from the Tax Court. Such Transcripts shall be prepared in accordance with Rule 28. Extensions of time may be sought under Rule 11.~~

**P.N.—Filing Fee.** Upon the filing of a Petition for Review, the petitioner shall pay a fee of \$125.00 to the Clerk in addition to any other fees to be paid to the Clerk. However, no filing fee ~~is required~~ is required if the petition is filed on behalf of a state or governmental unit or by a party who proceeded in *forma pauperis* in the Tax Court of Appeals.

**Q.O.—Applicability of Other Appellate Rules.** All other rules of appellate procedure shall apply to Petitions for Review from the Tax Court except as otherwise specifically provided in this Rule.

**R.P.—Supreme Court Evenly Divided.** Where the Supreme Court is evenly divided, either upon the question of accepting or denying review, or upon the disposition of the case once review is granted, review shall be deemed denied and the decision of the Tax Court shall be final.

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These amendments shall take effect January 1, 2008.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 12<sup>th</sup> day of September, 2007.

Randall T. Shepard  
Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.